SUPREME COURT, U. S.

No. 74-84

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1974

JEROME F. MILES and BERNICE MOORE, Individually and on behalf of all others as a class similarly situated,

Petitioners,

vs.

THE PULLMAN COMPANY, a corporation; BROTHERHOOD OF SLEEPING CAR PORTERS, an International Union; and CHICAGO DIVISION OF BROTHERHOOD OF SLEEPING CAR PORTERS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENT THE PULLMAN COMPANY

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The Scheffer Press, Inc.—(312) 263-6850

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BRIEF OF RESPONDENT THE PULLMAN COMPANY

The petition for writ of certiorari should be denied.

The Seventh Circuit was right in holding that the district court did not have subject matter jurisdiction of the controversy.

It has been repeatedly held that the Railway Labor Act, 45 U.S.C. § 153, First (i), vests exclusive primary jurisdiction over disputes as to the interpretation or application of collective bargaining agreements in the National Railroad Adjustment Board. See, *Andrews* v. *Louisville & Nashville Railroad Co.*, 406 U.S. 320, 324 (1972); *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548, 550-551 (1959); *Pickett* v. *New York Central Railroad*, 332 F.2d 968 (7 Cir., 1964); *Roberts* v. *Lehigh and New England Railway Company*, 323 F.2d 219 (3 Cir., 1963); *Switchmen's Union* v. *Ogden Union Railway & Depot Co.*, 209 F.2d 419 (10 Cir., 1954).

The petitioners argue that the crux of the complaint is that Pullman conspired with the unions to deprive the petitioners of the fair representation they were entitled to from the unions, and cite cases for the proposition that the federal courts do have jurisdiction of fair representation cases.

We do not deny that federal courts do have jurisdiction of fair representation cases. However, while the complaint does contain allegations of unfair representation, those allegations, as well as the other allegations of the complaint, are dependent upon the resolution of the dispute as to the proper interpretation and application of the collective bargaining agreement. Stated differently, the issues as to the interpretation of the May 27, 1968 collective bargaining agreement predominate. That being so, primary exclusive jurisdiction is vested in the National Railroad Adjustment Board. See, *Pickett* v. *New York Central Railroad*, 332 F.2d 968, 970 (7 Cir., 1964); *Thompson* v. *New York Central Railroad Company*, 361 F.2d 137, 139 (2 Cir., 1966).

Glover v. *St. Louis-San Francisco Railway Co.*, 393 U.S. 324 (1969), and *Czosek* v. *O'Mara*, 397 U.S. 25 (1970), are inapposite. They are not cases in which issues as to the interpretation of a collective bargaining agreement predominated.

The Seventh Circuit was also right in holding, for the reasons stated in its opinion, that the complaint failed to state a claim upon which relief could be granted as to Pullman.

Respectfully submitted,

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